



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/685,449	10/11/2000	Jeff Chin	2043.166US1	5968
49845 7590 01/22/2010 SCHWEGMAN, LUNDBERG & WOESSNER/EBAY P.O. BOX 2938 MINNEAPOLIS, MN 55402			EXAMINER COLBERT, ELLA	
			ART UNIT	PAPER NUMBER
			3696	
			NOTIFICATION DATE	DELIVERY MODE
			01/22/2010	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

USPTO@SLWIP.COM
request@slwip.com

Office Action Summary	Application No. 09/685,449	Applicant(s) CHIN ET AL.	
	Examiner Ella Colbert	Art Unit 3696	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 October 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4-9,29-33 and 35-46 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4-9,29-33 and 35-46 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>10/19/09</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1, 4-9, 29-33, and 35-46 are pending. Claims 1, 4-9, 33, and 46 have been amended and claims 2, 3, 10, 11, and 17 have been cancelled in this communication filed 10/27/09 entered as Response After Non-Final Action and A Request For Extension of Time.
2. The IDS filed 10/19/09 has been considered and entered.
3. The Amendment to the Specification has been reviewed and accepted.
4. The Drawing Objections have been overcome in part by the amendment to the Specification and are withdrawn in part as set forth here below.
5. The claim objections have been overcome by Applicants' amendment to the claims and the cancellation of claims 2, 3, 10, and 11 and are hereby withdrawn.
6. The 35 USC 101 Rejection for claims 1-11 has been overcome by the amendment to claim 1 and the cancellation of claims 2, 3, 10, and 11 and is hereby withdrawn.
7. The 35 USC 112, First Paragraph Rejection for claims 1-12, 17, 29-33, and 35-46 is moot since claims 2, 3, and 17 have been cancelled and the 35 USC 112, First Paragraph Rejection for claims 1, 4-9, 29-33, and 35-46 still remains as set forth here below.
8. The 35 USC 112, Second Paragraph Rejections for claims 1 and 17 have been overcome from the Office Action mailed 05/27/09 in view of Applicants' amendment to claim 1 and the cancellation of claim 17 and are hereby withdrawn.

Drawings

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: Fig. 2, element 50 and Fig. 7, element "120". Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: Fig. 8, "system 10". Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be

Art Unit: 3696

notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1, 4-9, 29-33, and 35-46 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The following are not found according to the specification on page 2, "A variable price schedule for the item is communicated to the user, and a reminder command associated with an entry", and the reminder command including a price selection for the item. The user is then notified when the entry in the schedule is reached. In ..., the entry can be a price entry and the step of notifying the user when the price entry is reached. The claim limitations of the independent claims recite a method comprising: presenting, via a first network, item information associated with an item on a sales screen to a user; communicating a variable price schedule for the item to the user, the variable price schedule including a plurality of price selections for the item; receiving a reminder command associated with a selection of an entry in the variable price schedule from the user, the reminder command including a price selection from the plurality of the price selections for the item; and notifying the user

Art Unit: 3696

when the entry in the variable price schedule is reached. The Specification throughout discloses "a falling price schedule". The Specification appears to be directed to "a falling price schedule" and not directed to "a variable price schedule". "A variable price schedule" is only mentioned briefly in the Specification.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1, recites "specified time period". A "time period is varied, broad, and indefinite. A "time period" can be any time that a person chooses to specify.

Applicants' have a first network and this indicates that there should be a second network in the body of the claim for performing the steps of claim 1.

Claims 4-9, 29-33, and 35-46 are also rejected because of their dependency from a rejected base claim.

"An essential purpose of patent examination is to fashion claims that are precise, clear, correct, and unambiguous. Only in this way can uncertainties of claim scope be removed ...". *In re Zletz* 13 USPQ2d 1320 (Fed. Cir. 1989).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 3696

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over (US 6,434,536) Geiger in view of (US 5,890,138) Godin et al., hereafter Godin.

Claim 1. Geiger discloses, A networked sales method, comprising:

presenting, with a sales server, via a first network, item information associated with an item on a sales screen to a user (col. 2, lines 12-52 and Fig. 2); receiving at the sales server a reminder request associated with a selection of an entry in the variable price schedule (col. 4, lines 29-46 and Fig. 3); and notifying the user when the price of the item is the price indicated in the entry associated with the received reminder request (col. 6, lines 29-36). Geiger did not disclose communicating with a sales server variable price schedule for the item to the user, the variable price schedule including a plurality of entries, each entry indicating a price at which the item is to be offered for sale in a specified time period. Godin discloses an auction, computer servers 10 and 12 with an end time, a starting price, a closing price, a quantity, and a product catalogue (col. 3, lines 21-60). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the teachings of Godin in Geiger because such an incorporation would allow Geiger to have an auction system where the product can be obtained at a very competitive price and there is a time period for the item(s) to be sold.

Art Unit: 3696

Claim 29. Geiger discloses, The method of claim 1, wherein the presenting of the item information includes: displaying an item identifier for an item on a sales screen (Fig. 2 and Fig. 3), and displaying a price box for the item on the sales screen (col. 2, lines 28-52).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 4-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over (US 6,434,536) Geiger in view of (US 5,890,138) Godin et al, hereafter Godin and further in view of (US 5,664,111) Nahan et al, hereafter Nahan.

Claim 4. Geiger and Godin failed to disclose, The method of claim 1 wherein the notifying the user includes notifying the user through a second network with a near-real-time alerting mechanism. Nahan discloses, wherein the notifying the user includes notifying the user through a second network with a near-real-time alerting mechanism (col. 2, lines 38-49). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the teachings of Nahan in Geiger because such an incorporation would allow Geiger to process documents to effect and settle the resulting transaction over a high speed communications network on a dynamic, real time basis.

Art Unit: 3696

Claim 5. Geiger discloses, The method of claim 1 wherein the notifying the user includes notifying the user through a wireless network (col. 6, lines 17-27)..

Claim 6. Geiger discloses, The method of claim 1 wherein the notifying includes presenting a purchase acceptance control button to the user (col. 6, lines 41-65).

Claim 7. Geiger discloses, The method of claim 6 wherein the notifying the user includes notifying the user through a telephone network, and wherein the presenting of the purchase acceptance control includes requesting that the user signal acceptance of a purchase acceptance using dial keys for a telephone connected to the telephone network (col. 6, lines 17-27).

Claim 8. Geiger, Godin and Nahan failed to disclose, The method of claim 1 wherein acceptance of the reminder request in the receiving of a reminder request from the user is contingent upon receipt of contact information for the user, wherein the presenting of the item is independent of the receipt of any contact information from the user. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have an acceptance of the reminder command in the receiving of a reminder command from the user is contingent on the receipt of contact information in a step of receiving contact information for the user, but wherein the presenting of the item is independent of the receipt of any contact information from the user and to modify in Geiger because such a modification would allow Nahan to have a button to press for a reminder command.

Art Unit: 3696

Claim 9. Geiger discloses, The method of claim 1 wherein the receiving of the reminder request is responsive to only a single click on a reminder control (col. 5, lines 53-65).

Claims 30-33, and 35-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over (US 6,434,536) Geiger in view of (US 5,664,111) Nahan et al, hereafter Nahan and further in view of (US 5,890,138) Godin.

Claim 30. Geiger and Godin failed to disclose, The method of claim 29 wherein the displaying of the item identifier includes displaying an image of the item on the sales screen and wherein the displaying of the price box displays the price box proximate the image of the item. Nahan discloses, wherein the displaying of the item identifier includes displaying an image of the item on the sales screen and wherein the displaying of the price box displays the price box proximate the image of the item (col. 8, line 1-col. 9, line 60 and Fig. 7). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the teachings of Nahan in Geiger because such an incorporation would allow Geiger to have computer software that performs certain functions and is geared to the management of a particular inventory for the purpose of buying and selling products.

Claim 31. Geiger and Godin failed to disclose, The method of claim 29 wherein the displaying of the item identifier includes displaying an image on the sales screen and wherein the displaying of the price box displays the price box to overlap the image of the item. Nahan discloses, wherein the displaying of the item identifier includes displaying an image on the sales screen and wherein the displaying of the price box

Art Unit: 3696

displays the price box to overlap the image of the item (col. 8-Table 1-col. 10, Table 2).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the teachings of Nahan in Geiger because such an incorporation would allow Geiger to have a display on the view monitor of a product for sale in display format.

Claim 32. Geiger and Godin failed to disclose, The method of claim 29 wherein the displaying of the plurality of price choices displays the plurality of choices as a series of user price selection controls. Nahan discloses, wherein the displaying of the plurality of price choices displays the plurality of choices as a series of user price selection controls (col. 11, line 60-col. 12, line 35). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the teachings of Nahan in Geiger because such an incorporation would allow Geiger to determine the number of images to be displayed and if a previous page is to be displayed the display routine is immediately invoked then the next page with the full number of images is displayed.

Claim 33. Geiger, Godin and Nahan, failed to disclose, The method of claim 1 wherein the communicating of the variable price schedule to the user includes displaying at least one user price selection control as a control that is responsive to a single actuation to place a bid on the item. It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate in Geiger because such an incorporation would allow Geiger to press a "place bid" button to send the bid to the electronic auction system for processing.

Claim 35. Geiger and Godin failed to disclose, The method of claim 29 wherein the price

Art Unit: 3696

box has one curved edge. Nahan discloses, wherein the price box has one curved edge (See Fig. 7 (176)). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the teachings of Nahan in Geiger because such an incorporation would allow Geiger to have a display price in a circular box which has a curved edge.

Claim 36. Geiger and Godin failed to disclose, The method of claim 29 wherein the price box has a circular marking near one of its edges. Nahan discloses, the price box has a circular marking near one of its edges (col. 13, lines 3-28). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the teachings of Nahan in Geiger because such an incorporation would allow Geiger to have a display price in a circular box which has a curved edge.

Claim 37. Geiger discloses, The method of claim 29 further including displaying price boxes for different items and further displaying price choices for those items on the same screen (col. 4, lines 29-67)..

Claim 38. Geiger and Nahan failed to disclose, The method of claim 37 further including displaying an image for each of the items on the sales screen. Godin discloses, including displaying an image for each of the items on the sales screen (col. 5, line 41-col. 6, line 36 and fig. 9-shows two items (one item for now and one item which is next on the block)). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the teachings of Godin in Geiger because such an incorporation would allow Geiger to have the screen show the product that is being auctioned with the price and information and the next item to go on

Art Unit: 3696

the block to be auctioned.

Claim 39. Geiger and Nahan failed to disclose, The method of claim 29 further including the displaying further price information for the item in response to user interaction with the price box. Godin discloses, including the displaying further price information for the item in response to user interaction with the price box (col. 6, lines 1-36). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the teachings of Godin in Geiger because such an incorporation would allow Geiger to have the screen show the product that is being auctioned with the price and information.

Claim 40. Geiger discloses, The method of claim 39 wherein the displaying further price information displays the information in a window that overlays an area of the screen in which the price box and the item identifier are displayed (col. 2, line 28-col. 3, line 52).

Claim 41. Geiger discloses, The method of claim 39 wherein the displaying is responsive to the user locating a pointing device cursor above a screen area associated with the item (Fig. 9-shows where a pointing device cursor can be placed above a screen in the area associated with the item).

Claim 42. Geiger and Nahan failed to disclose, The method of claim 29 wherein the price box further includes an accessorize button that is responsive to user input to retrieve information about items available that complement the item for which the price box is displayed. Godin discloses, wherein the price box further includes an accessorize button that is responsive to user input to retrieve information about items available that complement the item for which the price box is displayed (Fig. 10-Shows

Art Unit: 3696

a price box that includes a button that can be used to accessorize and to retrieve information about the items). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the teachings of Godin in Geiger because such an incorporation would allow Geiger to have the screen show the product that is being auctioned with the price and an information button.

Claim 43. Geiger, Godin and Nahan failed to disclose, The method of claim 1 wherein the communicating of the variable price schedule includes displaying a present price and a present purchase control button next to it. It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate in Geiger because such an incorporation would allow Geiger to have the screen show the product that is being auctioned with the price and an information and a purchase control button. The recitation the present price and a present purchase control button constitutes a statement of intended use. As such, the recitation is not afforded patentable weight. The intended use of a button is not functionally related to the structure of the method as claimed. The structure of the method remains the same regardless of the button being used. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, *see In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); MPEP §2106.

Claim 44. This dependent claim is rejected for the similar rationale as given above of dependent claim 43. The recitation the future price and a future purchase control button constitutes a statement of intended use. As such, the recitation is not afforded

Art Unit: 3696

patentable weight. The intended use of a button is not functionally related to the structure of the method as claimed. The structure of the method remains the same regardless of the button being used. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, *see In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); MPEP §2106.

Claim 45. This dependent claim is rejected for the similar rationale as given above for claims 43 and 44. The recitation the present purchase control button and a future purchase control button constitutes a statement of intended use. As such, the recitation is not afforded patentable weight. The intended use of a button is not functionally related to the structure of the method as claimed. The structure of the method remains the same regardless of the button being used. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, *see In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); MPEP §2106.

Claim 46. Geiger discloses, The method of claim 1 wherein the communicating of the variable price schedule includes displaying the plurality of choices as a series of displayed price values each located proximate one of a plurality of purchase control buttons (See Fig. 2-the screen with the control buttons of BUY IT and SELL IT). The recitation the purchase control buttons constitutes a statement of intended use. As such, the recitation is not afforded patentable weight. The intended use of a button is not functionally related to the structure of the method as claimed. The structure of the

Art Unit: 3696

method remains the same regardless of the button being used. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); MPEP §2106.

Allowable Subject Matter

The following is a statement of reasons for the indication of allowable subject matter: Claims 4, 5, and 29 reciting “notifying the user includes notifying the user through a second network with a near-real-time alerting mechanism, notifying the user through a wireless network, and presenting the item information includes: displaying an item identifier for an item on a sales screen: and displaying a price box for the item on the sales screen. Claim 1 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims 4, 5, and 29.

Response to Arguments

Applicant's arguments filed 10/27/09 have been fully considered but they are not persuasive.

Issue no. 1: Applicants' argue: Geiger does not describe or suggest “communicating ... a variable price schedule including a plurality of entries, each entry indicating a price at which [an] item is to be offered for sale in a specified time period “as is currently recited in amended claim 1” has been considered but is not persuasive. Response: Variable price schedule is briefly mentioned on page 3 in the last paragraph. Throughout the Specification, falling price and falling price schedule is disclosed and discussed

Art Unit: 3696

particularly on pages 2-4. The Examiner does not find a plurality of entries or each entry indicating a price at a which {an} item is to be offered for sale in a specified time period in relation to a variable price schedule. What is recited is as follows: "In a further general aspect, the invention features a networked sales system, comprising means for communicating a variable price schedule for the item to the user, means for receiving a reminder command from the user associated with an entry in the schedule, the reminder command including a price selection for the item, and means for notifying the user when the entry in the schedule is reached". Therefore, the Specification appears to be directed to "a falling price schedule".

Issue no. 2: Applicants' argue: Nahan does not describe or suggest the use of a "variable price schedule "as that term is claimed in claim 1 and throughout Applicants' specification and claim 1 is not anticipated by Geiger, claims 4-7 are not obvious in view of the combination of Geiger and Nahan has been considered but is not persuasive.

Response: This argument is partially moot in view of Applicants' amendment to claim During patent examination, the pending claims 1, 4-9, 29-33, and 35-46 must be given the **broadest reasonable interpretation consistent with the specification**. Reading a claim in light of the specification, to thereby interpret limitations explicitly recited in the claim, is quite different from reading limitations of the specification into a claim, to thereby narrow the scope of the claim by implicitly adding disclosed limitations which have no express basis in the claim. *In re Prater*, 162 USPQ 541 (CCPA 1969)

"We are not persuaded by any sound reason why, at any time before the patent is granted, an applicant should have limitations of the specification read into a claim where

Art Unit: 3696

no express statement of the limitation is included in the claim ... However, this court has consistently taken the tack that claims yet unpatented are to be given the broadest reasonable interpretation consistent with the specification during the examination of a patent application since the applicant may then amend his claims, the thought being to reduce the possibility that, after the patent is granted, the claims may be interpreted as giving broader coverage than is justified." *In re Prater*, 162 USPQ 541 (CCPA 1969).

"An essential purpose of patent examination is to fashion claims that are precise, clear, correct, and unambiguous. Only in this way can uncertainties of claim scope be removed ...". *In re Zletz* 13 USPQ2d 1320 (Fed. Cir. 1989).

Issue no. 3: Applicants' argue: Godin does not describe or suggest the use of a "variable price schedule" as that term is claimed in claim 1 and throughout Applicants' specification has been considered but is not considered persuasive. Response: Godin was not used to teach a "variable price schedule". Geiger was used to reject this claim limitation.

It is noted that Applicants' are silent regarding the suggestion of incorporating claims 4, 5, and 29 into claim 1 making claim 1 allowable and the claims which depend therefrom.

Applicants' need to file a terminal disclaimer because the claim limitations of application 11/352,173 are close to the claim limitations of the instant application.

The only recitation that appears different is a "falling price schedule".

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Inquiries

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ella Colbert whose telephone number is 571-272-6741. The examiner can normally be reached on Flexible Schedule.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Trammell James can be reached on 571-272-6712. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3696

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ella Colbert/
Primary Examiner, Art Unit 3696

January 19, 2010